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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/571,297

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Matthias Pirsch

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EXAMINER

ROGERS, DAVID A

ART UNIT

PAPER NUMBER

2856

MAIL DATE

DELIVERY MODE

10/17/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/571,297	Applicant(s) PIRSCH ET AL.	
	Examiner DAVID A. ROGERS	Art Unit 2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 12-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/10/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. The applicant's amendment to claim 12 to depend on claim 1 is acknowledged. However, claim 1 is not patentable as noted below. As a result the inventions listed previously as Group A and Group B are still not so joined by a common technical feature. Therefore, claims 12-18 are hereby withdrawn from further consideration as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 15 September 2008.

It is noted that claims 12-18 will be rejoined and examined should claim 1 eventually be found to be allowable.

Claim Rejections - 35 U.S.C § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 10, and 11 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by United States Patent 6,490,913 to Martin *et al.*

Martin *et al.* discloses a climate chamber (reference item 1) with a housing for holding an analysis device; e.g., an atomic force microscope. The housing is provided with an inlet (reference item 9) and an outlet (reference item 10) for providing

conditioned (humidified) air. The humidified air will flow at least partially against the analysis device or the sample within the housing.

With regard to claim 2 the tapped bore through the housing forms a flow directing device for the input airflow.

With regard to claims 10 and 11 it is noted that the applicant's specification states:

In a particularly preferred embodiment, the housing is configured such that it promotes an optimum flow. Consequently, only a very small quantity of condensate is found at the housing inner wall. Flow optimization can preferably be realized by arranging two adjacent walls at an angle of at least 90° relative to each other."

The chamber of Martin *et al.* has two adjacent walls arranged at an angle of 90°. Therefore, the chamber of Martin *et al.* is configured for optimum flow.

4. Claims 1, 2, 7, 8, 10, and 11 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by United States Patent 3,393,032 to Crisler *et al.*

Crisler *et al.* discloses a climate chamber (reference item 20) having a housing that defines a climate compartment and which holds at least partially a microscope (reference item 90). The climate chamber is provided with inlet ports (reference item 75) and outlet ports (reference item 80) for allowing a medium to flow through the climate chamber.

With regard to claim 2 the inlet ports through the housing form a flow directing device for the input medium.

With regard to claim 7 the applicant's specification states that condensate-sensitive devices include the lenses of the microscope. As configured the lenses of the

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microscope in the device of Crisler *et al.* are located in the flow of the medium that circulates through the chamber.

With regard to claim 8 Crisler *et al.* discloses the use of temperature sensors. See column 3 (lines 14-28). The temperature sensor, when used in the chamber, will be near the carrier that holds the sample being examined using the microscope.

With regard to claims 10 and 11 it is noted that the applicant's specification states:

In a particularly preferred embodiment, the housing is configured such that it promotes an optimum flow. Consequently, only a very small quantity of condensate is found at the housing inner wall. Flow optimization can preferably be realized by arranging two adjacent walls at an angle of at least 90° relative to each other."

The chamber of Crisler *et al.* has two adjacent walls arranged at an angle of 90°. Therefore, the chamber of Crisler *et al.* is configured for optimum flow.

5. Claims 1-3 and 8-11 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by United States Patent 4,843,893 to Huber *et al.*

Huber *et al.* discloses a climate-controlled chamber (reference item 10) having housing having an inlet (reference item 26) and an outlet (reference item 40) that is essentially opposite from the inlet and through which a medium flows. Within the climate-controlled chamber is a sample carrier (reference item 16), a temperature sensor (reference item 66), and an analytical device; e.g., a light sensor (reference item 77). The medium flows at least partially against the sample carrier, including the lower side of the sample carrier, and/or the analytical device. The attachment that fits the blower (reference item 28) to the chamber is considered to be a flow directing device.

See column 3 (lines 44-50). As at least two adjacent wall of the chamber are at 90° the chamber must have optimum flow.

6. Claims 1-6, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent 4,817,447 to Kashima *et al.*

Kashima *et al.* teaches a device having a climate chamber with a laterally offset inlet (reference item 25) that supplies conditioned media at least partially against a sample support (reference item 7). See column 6 (lines 52-62). This inlet portion has an approach angle that appears to be in the range of 30° to 60°. Kashima *et al.* also teaches another inlet located below the sample support that also provides conditioned media to the sample support. See column 6 (lines 42-51). This provides a flow of at least 50%-70% against the sample carrier. Kashima *et al.* also discloses the use of a temperature sensor (reference item 17) which would inherently produce a signal indicative of the temperature of the sample. Kashima *et al.* does not teach an analysis device in the chamber.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID A. ROGERS whose telephone number is (571)272-2205. The examiner can normally be reached on Monday - Friday (0730 - 1600). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron E. Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David A. Rogers/
Primary Examiner, Art Unit 2856